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On 7/9/04

TOWNSEND and TOWNSEND and CREW LLP

By: Pamela Skelton

PATENT
022024.000100US

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

Kang P. Lee, et al.

Application No.: 10/034,444

Filed: December 21, 2001

For: Aerogel Powder Therapeutic Agents

Examiner: M. Haghighatian

Art Unit: 1616

DECLARATION OF KANG P. LEE

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

I, Kang P. Lee, do declare as follows:

1. I am the a founder of Aspen Aerogels, Inc., a spin-off from Aspen Systems, Inc. I was president of Aspen Systems, Inc. from 1984 to present. Aspen Aerogels, Inc. was founded on May 4, 2001 and is the assignee of record in the instant patent application (serial number 10/034,444). I have a doctorate degree in Mechanical Engineering, but am unfamiliar with the particulars of the patent application process. A copy of my biographical sketch is attached as Exhibit A.

2. In July 2003, I received a letter dated July 3, 2003 from Bruce Jacobs, the patent attorney in charge of prosecuting the instant application. A copy of that letter is attached as Exhibit B. The letter reported a "final" rejection from the Examiner in charge of the instant application. The rejection was in an Office Action mailed June 30, 2003, a copy of which was enclosed with the letter.

3. I noticed that the July 3, 2003 letter contained an error in the title of the instant application. I crossed out the error by hand and wrote in my own reference for the title of the instant application as seen on the attached copy. I also noted that Mr. Jacobs only identified August 30, 2003 as a deadline for comments to assist him with the preparation of a response. I believed that the possibility of a response meant that prosecution of the application had not ended.

4. At the time I received the July 3, 2003 letter, I was not familiar with the particular prosecution deadlines in the instant application. Thus I was not aware of the three month shortened statutory period for reply (ending on September 30, 2003) or the final deadline for reply (on December 30, 2003), both of which were set by the Office Action mailed June 30, 2003. I only learned of these dates after I learned that the instant application was abandoned (see paragraph 8 below).

5. I know that from the period of 1984 through April 19, 2004, Aspen Aerogels, Inc. did not have any in-house patent attorney or patent agent. I know that Aspen Systems, Inc. and Aspen Aerogels, Inc. maintained no internal docketing system of patent application deadlines from April 19, 2004 to the present day. I know that it was our policy to rely solely upon the outside patent attorney, such as Mr. Jacobs, handling our patent applications to docket all deadlines and to alert us of upcoming deadlines. Indeed, it was my previous experience that in cases where a deadline was approaching, the outside patent attorney would send us reminders.

6. I do not recall any reminder or other communication concerning the instant application from Mr. Jacobs after my receipt of the July 3, 2003 letter. My

ongoing understanding with Mr. Jacobs was that in the absence of a response from Aspen Systems, Inc., he was to err on the side of caution and not allow any application to expire or be abandoned.

7. To assist the outside patent attorney with the preparation of a response, my practice was to forward the relevant materials to the appropriate individual(s) within Aspen Systems, Inc. to work with the attorney. After receipt of the July 3, 2003 letter and enclosure, I forwarded it to George Gould, a co-inventor of the instant application and Director of Research and Development at Aspen Aerogels, Inc., to respond to, and assist, Mr. Jacobs.

8. On May 19, 2004, I was tremendously surprised to learn from our Intellectual Property Manager, Dr. Poongunran Muthukumaran (who started at Aspen Aerogels, Inc. on April 19, 2004) that the instant application had been abandoned on the basis of a failure to respond to the Office Action mailed June 30, 2003. On the same day, I asked Dr. Muthukumaran to find out what happened and to see if we could revive the application.

9. My surprise was especially significant because in late 2003 and early 2004, I began discussions behalf of Aspen Aerogels, Inc. to license rights in the instant application to another entity.

10. After May 19, 2004, I checked for, and failed to locate, any communication from Mr. Jacobs reminding me of any deadline in the application. In the absence of any such reminder, I had treated the application as still pending, as shown by my discussions with a third party described in paragraph 9 above.

11. After May 19, 2004, I learned from Dr. Muthukumaran that a Cheryl Middleton of Mr. Jacobs' office "confirmed" abandonment of the instant application on January 30, 2004 during a telephonic interview with Examiner M. Haghighatian. This was indicated in an Interview Summary attached to the Notice of Abandonment mailed February 10, 2004 for the instant application. I do not know why Ms. Middleton would have done such a thing. I had not communicated any instructions regarding "abandonment" to Ms. Middleton or Mr. Jacobs.

12. Based on the entirety of the foregoing, I believe that the failure to respond to the Office Action mailed June 30, 2003 was unintentional. Indeed, the failure was, and is, contrary to my expectations.

13. I further declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the instant application or any patent issuing thereon.

Respectfully submitted,

Kang P. Lee

Kang P. Lee, Ph.D.

6/18/2004

Exhibit A. Biographical Sketch

Kang P. Lee, PhD.

After attending primary school in the countryside soon after the Korean War, Lee was admitted to Kyung-Gi, the most prestigious junior high school in Korea. Kyung-Gi was widely recognized as the ticket to success in the traditionally education-crazed nation of Korea. He went on to the College of Engineering at Seoul National University to major in Mechanical Engineering. After spending most of his adolescence and early adulthood dedicated to excelling in school, Lee left Korea in 1972 in order to pursue his dream of earning a PhD from Massachusetts Institute of Technology (MIT). He began by winning a scholarship to pursue his Masters degree at Clarkson College, a small school in upstate New York. After less than a year, Lee transferred to MIT in order to work with some of America's leading scientists.

Lee had no money when he immigrated to the US, and needed a Teaching/Research Assistant position to provide an income. He accepted two radically different positions at MIT-one in the Acoustics Laboratory and the other in the Thermodynamics/Cryogenics Laboratory. Availability of paying research jobs-rather than a background or deep interest in either acoustics or thermodynamics - dictated his choices. As Lee began his doctoral work, he realized that he would have to narrow his scientific focus in order to continue an academic career. The pressure to develop a deep specialization demoralized Lee. He found this prospect unappealing:

" I wanted to be more than an engineer. When I got to MIT, I realized that most of the scientists were working on projects that weren't going to change the world. My whole life's dream suddenly seemed to be evaporating before my eyes. So, I went looking for new sourcesof inspiration. Before long, I realized that engineers had a huge impact on the world by combining science and business. I decided that my new goal was to build a multi-billion dollar, international, science-driven company in one generation whose products could change the world. In order to pursue this new goal, while I was studying for a Ph.D in Mechanical Engineering, I poured my energy into learning the process of innovation leading to business startups at the then newly formed MIT Innovation Center. I also studied topics such as financial management and management accounting at the Sloan School of Management"

In 1978, having received a Ph.D in Mechanical Engineering with a Minor in Business Management, Lee left MIT for a new job in the R&D industry. He worked in industry for several years, a period he describes as an apprenticeship. Lee founded Aspen Systems Inc. in 1984 to develop advanced technologies and materials for energy and environmental applications. The plan was to rely on US. Government funding. Lee was able to take advantage of a relatively new program, the Small Business Innovation Research (SBIR) program, which was introduced by the U.S. Congress in 1982 to stimulate technology innovation in small companies.

This program enabled Aspen Systems to become financially stable while developing various advanced technologies for the US. Government. Aspen was also able to investigate other technologies that might form the basis for a stand-alone company.

In 1993, Aspen Systems began experimenting with aerogels as part of a program to develop better insulation for the cryogen pipeline at NASA Kennedy Space Center. Aspen engineers soon invented a flexible aerogel blanket that made aerogel insulation quite practical to use. In March 1999, Lee invented a new vastly improved method of producing aerogels for which Aspen received the 1999 SBIR Technology of the Year in Materials and Manufacturing award. After spending less than $5 million of government funding over the preceding eight years, Aspen became the world leader in Aerogels.

Aspen Aerogels was spun out of Aspen Systems in May 2001 to focus on commercialization of aerogels. Aspen Systems was pursuing several other exciting technologies including a product for extracting hydrogen from various fuels for use in fuel cells. This project spawned another spin off called Aspen Products Group, Inc., which became a world leader in the liquid hydrocarbon reforming field. By 2001, Lee had helped start eight early stage technology based companies working on products including aerogels, liquid fuel reforming, electrically conducting polymers for semiconductors and display, and a tumor cell-targeting cancer treatment.